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SUBJECT: GUINEAN GOVERNMENT TRIES TO SQUEEZE MORE OUT OF MINING
CONTRACTS

¶1. (SBU) SUMMARY. The Guinean government's contract review commissions published their reports regarding the contracts of U.S. oil company Hyperdynamics and Rusal, the Russian bauxite mining company. The GoG recommends major changes in both contracts in order to collect desperately needed additional revenues. Despite its high demands, the Government may be willing to compromise. END SUMMARY

¶2. (SBU) The Government of Guinea (GoG) previously established separate commissions to review each of its current major mining contracts. On August 27, two of those commissions released their reports with respect to Hyperdynamics and Rusal. The Hyperdynamics commission recommended that the GoG change most of the terms in the oil and gas sharing contract, which in effect, would result in a near complete reversal of benefits in Guinea's favor.

¶3. (SBU) The GoG proposal calls for changes to the sliding profit sharing scale between Guinea and Hyperdynamics, which is linked to overall production. Currently, the GoG gets 25% of profits at start-up production levels, which increases to 60% at full production. The GoG's proposed amendment, cited by the commission, has the scale starting at 75% for the GoG at start-up and 90% at full production. The report also called for a minimum of 40% reduction in the off-shore production area covered by the contract. With respect to the Rusal contract, the commission recommended an increase of 1000% in the monthly rent paid under the company's current bauxite contract, from about 62,000 USD to about 700,000 USD.

¶4. (SBU) The commissions cite legal justifications to support their recommendations. For example, the Hyperdynamics commission cited article 77 of the "Loi Fundamentale" as the basis for the revision of the contract. Article 77 provides for ratification of all contracts by the National Assembly before they can be considered binding. (Note - There is some controversy to this assertion as it is argued that Article 77 applies only to mining contracts, while Hyperdynamics' contract should be considered under the petroleum code, which allegedly does not require National Assembly approval.)

¶5. (SBU) On August 27, Econoff met with the local attorney for U.S. company Hyperdynamics, Maitre Alpha O. Diallo. The lawyer stated that the in-country manager of Hyperdynamics, Foromou Kourouma, met on August 21 with President Cont, and that a company representative had met with the Prime Minister's office on August 23. M. Diallo was unable to discuss the details of the discussion with Cont.

¶6. (SBU) Diallo characterized the reaction of the Prime Minister as sympathetic. However, he also said that Kouyate wants and/or needs Hyperdynamics to offer some kind of concession so that the public could see that he is making progress on his reform efforts.

¶7. (SBU) Maitre Diallo stated that he would be contacting Hyperdynamics management in Houston to explain the situation and to determine a course of action. He added that he needs his client to clarify which changes the company might be willing to accept and which changes are non-negotiable. Diallo requested that the USG pressure the Government of Guinea to honor the contract as written.

¶8. (SBU) COMMENT. The Hyperdynamics contract includes several terms that may be considered unfair to Guinea, but which were agreed to by both parties when the contract was written. The current interplay of Guinean domestic politics, extreme poverty, systemic corruption, and unrealistic popular expectations is driving the GoG's controversial efforts to renegotiate contracts and ultimately expand Government coffers. The fact that the GoG is looking to revise the Rusal contract, in addition to that of Hyperdynamics, indicates that the Government may not be singling out individual companies. The GoG may be willing to negotiate terms, which while not perfect, could offer a possible solution within a short time frame, provided Hyperdynamics is willing to compromise. Embassy continues to stress to appropriate host government officials the importance of contract integrity and equal treatment of all parties, especially with respect to promotion of a positive investment climate and general rule of law. END COMMENT.

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